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"NON-DISPOSAL OF UNCLEARED/ UNCLAIMED IMPORTED CARGO IN ICDs/CFSs"

MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)

PUBLIC ACCOUNTS COMMITTEE 2007-2008

FIFTY-THIRD REPORT

FOURTEENTH LOK SABHA

LOK SABHA SECRETARIAT
NEW DELHI

FIFTY-THIRD REPORT

PUBLIC ACCOUNTS COMMITTEE
(2007-2008)

(FOURTEENTH LOK SABHA)

"NON-DISPOSAL OF UNCLEARED/ UNCLAIMED IMPORTED CARGO IN ICDs/CFSs"

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

[*Action Taken on* 27*th Report of Public Accounts Committee* (14*th Lok Sabha*)]

Presented to Lok Sabha on 23.8.07
Laid in Rajya Sabha on 23.8.07

LOK SABHA SECRETARIAT
NEW DELHI

July, 2007/*Sravana,* 1929 (*Saka*)

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COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
(2007-2008)

Prof. Vijay Kumar Malhotra — *Chairman*

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3. Shri Brahm Dutt	—	*Director*
4. Shri M.K. Madhusudhan	—	*Deputy Secretary*
5. Smt. A. Jyothirmayi	—	*Committee Officer*

INTRODUCTION

I, the Chairman, Public Accounts Committee, as authorised by the Committee, do present this Fifty-third Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 27th Report (14th Lok Sabha) on "Non-disposal of uncleared/unclaimed imported cargo in ICDs/ CFSs".

2. This Report was considered and adopted by the Public Accounts Committee at their sitting held on 18th July, 2007. Minutes of the sitting form Part II of the Report.

3. The Committee place on record their appreciation of the assistance rendred to them in the matter by the Office of the Comptroller and Auditor-General of India.

4. The Committee also place on record their appreciation for the invaluable assistance rendered to them by the officials of Lok Sabha Secretariat attached with the Committee.

NEW DELHI;
24 *July,* 2007
2 *Sravana,* 1929 (*Saka*)

PROF. VIJAY KUMAR MALHOTRA,
Chairman,
Public Accounts Committee.

CHAPTER I

REPORT

This Report of the Committee deals with the action taken by the Government on the Observations/Recommendations of the Committee contained in their Twenty Seventh Report (Fourteenth Lok Sabha) on "Non-disposal of uncleared/unclaimed imported cargo in ICDs/CFSs".

2. In their Twenty Seventh Report presented to Lok Sabha on 17th March, 2006 the Committee had dealt with various issues relating to uncleared/unclaimed goods in ICDs/CFSs and the recovery of revenue due to Government thereon. The Report contained fifteen Observations/Recommendations.

3. The Action Taken Notes have been received from the Ministry of Finance in respect of all the 15 Observations/Recommendations and these have been categorised as follows:—

(i) Observations/Recommendations which have been accepted by Government;
Sl.Nos. 3 to 7, 9 to 12, 14 and 15

(ii) Observations/Recommendations which the Committee do not desire to pursue in view of the replies received from Government;
Sl. Nos. 1 and 2

(iii) Observations/Recommendations in respect of which replies of Government have not been accepted by the Committee and which require reiteration;
-Nil-

(iv) Observations/Recommendations in respect of which Government have furnished interim replies;
Sl. Nos. 8 and 13

Gist of Committee's Observations/Recommendations contained in 27th Report (14th Lok Sabha)

4. The important Observations/Recommendations made by the Committee in their 27th Report on the subject are as follows:

* A definite time limit should be fixed for early disposal of all categories of goods including confiscated/seized goods and any delay in this regard should be taken seriously and responsibility fixed both on the Custodians as well as the concerned officials.

* Board should examine the feasibility of evolving a system of periodical physical verification by an appropriate machinery of the cargo to be disposed of. For this, special cargo disposal cells may be set up in each Commissionerate.
* Internal Audit system in Customs Department should be revamped and strengthened so that they perform their role satisfactorily. Their scope and ambit should also be broadened so as to bring all the records of cases pertaining to non-disposal of cargo by the Custodian under their scrutiny/ check.
* Appropriate rules and guidelines should be formulated to control the activities of Custodians so that in the event of their failure to adhere to the obligations, the Department/Board can take suitable punitive action against erring Custodians and ensure that revenue is protected. For this, if necessary, the Customs Act, 1962 may be amended.
* CBEC should examine the feasibility of constituting a core group at the Board level, which should meet at regular intervals for monitoring the progress made in expeditious disposal of uncleared/unclaimed goods in various ICDs/CFSs.
* Management Information System in regard to examination/scrutiny of cargo before their clearance for dosposal should be strengthened and periodically reviewed so that deficiencies in the procedures and monitoring systems in clearance of the goods for disposal do not recur in future.
* Status of abandoned goods should be properly defined and appropriate amendments to this effect should be made in the Customs Act, 1962 so as to recover the costs involved in their maintenance. The Board should also formulate guidelines/instructions with respect to the modalities for their disposal.
* Necessary Steps should be taken to introduce/implemente-auction in all the Commissionerates in a time-bound period so as to safeguard the revenue of the Government.

5. The Committee desire that Government should furnish final/conclusive action taken replies to the recommendations for which interim replies have been furnished

6. The action taken notes furnished by the Ministry of Finance have been reproduced in the subsequent Chapters of this Report. The Committee will now deal with the action taken by the Government on some of their Observations/ Recommendations that require reiteration or merit comments.

A. Need for fixation of time-limit for disposal of confiscated/seized goods

(Recommendation Sl. No. 4, Para No. 61)

7. In their 27th Report, the Committee had urged the Ministry to ensure that Commissionerates make all possible efforts for speedy trial of Court/BIFR cases and a definite time limit may be fixed for disposal of cases which are pending investigation before SIIB/DRI/DIU so as to protect the Government Revenue. The Committee had recommended that Ministry/Department should look into the matter with a view to find ways and means to simplify the procedures for expeditious disposal of cargo.

Further, a time limit should also be fixed for all categories of confiscated/seized goods with a view to dispose off them expeditiously.

8. The Ministry of Finance (Department of Revenue) in their Action Taken Note have stated that in respect of the cases where seizure/confiscation of goods is involved, the Department takes necessary penal action against offender by way of issue of notice and adjudication proceedings. At the same time in order to effectively dispose off the goods in time and to safeguard the interest of Revenue, the relevant provisions of the Customs Act, 1962 have been amended *vide* section 26 of the Taxation Laws (Amendment) Act, 2006 with effect from 13th July, 2006. Accordingly, under section 110A any goods, documents or things seized under section 110, pending investigation or the order of the adjudicating officer, can be released to the owner on taking a bond with security. This would ensure that the duty on the goods is collected at the time of such provisional release and the possible fine and penalty are safeguarded through the security. Further, the Custom Houses have been directed to constitute Special Task Forces to conduct a comprehensive review of all the consignments indicated as being "detained" by various investigating agencies such as DRI/SIIB/DIU for final disposal in terms of revised procedure for auction/tender. Regarding disposal of goods including the confiscated/seized goods, the Ministry have stated that a revised procedure for simplified valuation for time bound disposal of goods have been prescribed. In this disposal process, it has also been prescribed that if the confiscated goods which are ripe for disposal, are not sold in auction for the third time, then such goods would be disposed off at the highest bid in the third auction, thereby making it mandatory for time bound disposal of goods.

9. The Committee express their satisfaction over the steps taken by the Ministry for safeguarding the revenue due to Government as well as for the expeditious collection of Revenue in cases where seizure/confiscation of goods is involved. However, the Committee are apprehensive about the possibility of owners making fraudulent claims when goods are released provisionally on the basis of bond furnished by them. The Committee would like to reiterate that the protection of Government revenue should be the underlying objective of the measures that are aimed at simplification of procedures. Government, should therefore, take all possible steps to prevent the possibility of misuse of this facility by the owners so as to protect the Government Revenue. The Committee would also like to be apprised about the progress made by the Customs Houses in constituting the Special Task Force as well as the work done by these Task Forces in review of the consignments that were pending for final decision under the revised procedure.

B. Control over the activities of Custodian

(Recommendation Sl. No. 8, Para No. 65)

10. Noting that no detailed Rules empowering the Customs to take any punitive/ deterrent action against the Custodians in cases of non-fulfillment of the obligations by the Custodians have been framed and that no safeguards for protection of Revenue in cases of negligence or violations of the conditions/guidelines by the Custodians exist in the Customs Act, the Committee had recommended that Government should

formulate appropriate rules and guidelines to control the activities of the Custodian so that in the event of their failure to adhere to the obligations, the Department/Board can take suitable punitive action against the erring Custodians so that revenue could be protected. For this, if necessary, the Customs Act, 1962 should be amended.

11. In their Action Taken Notes the Ministry have stated that the ICDs/CFSs, while being appointed as custodians of the goods, are subjected to certain conditions. These relate to provision of safe, secure and spacious premises for loading/unloading in storage of cargo, modern facilities for material handling, supporting equipments, EDI connectivity, proper insurance of the goods stored, undertaking to bear the duty on goods lost or pilfered and to abide by all rules and regulations under the Customs Act. The main obligations of the custodian is to properly account for the goods, keep them under safe custody, provide efficient clearance process and for compliance with the Customs Act, 1962 and other acts, rules and regulations in force thereof. Non-fulfillment of the above would make them liable for penal action and termination of custodianship, which is enforced in specific cases following due process of principles of natural justice.

The Ministry have further stated that a separate team of officials at Mumbai and Chennai under the supervision of Chief Commissioner Mumbai-II and Chief Commissioner, Chennai (Sea) have been directed to examine the entire gamut of provisions relating to ICD/CFS and come up with a proposal of amendment to Customs Act, 1962 by way of introduction of a specific self-contained chapter including penal provisions relating to functioning of ICD/CFS. They shall be submitting the report by *15th January, 2007.* After receipt of the report necessary changes required shall be incorporated in the Customs Act, 1962.

12. The Committee note that team of Customs officials of Mumbai and Chennai under the supervision of Chief Commissioners of Customs Mumbai-II and Chennai (Sea) respectively had been constituted to examine the entire gamut of provisions relating to ICD/CFS and to suggest proposals for suitable amendments to Customs Act, 1962 for incorporating a self-contained Chapter on functioning of ICDs/CFSs therein. The Committee have also been informed that the Team of officials would be submitting its Report by 15th January, 2007. The Committee would like to be apprised of the main findings of the Report of the Expert team and the changes/amendments made or proposed to be made in the Customs Act, 1962 in pursuance of the recommendation/suggestion given by the Team of officials within three months from the presentation of the Report.

C. Follow up action on Task Force Report

(Recommendation Sl. No. 15, Para No. 72)

13. In their 27th Report, the Committee had expressed the hope that the revised Procedure prescribed by the Board for expeditious disposal of unclaimed/uncleared cargo in the light of recommendation of Task Force Report would cut down the delays and enable the Custodians to dispose unclaimed/uncleared goods expeditiously and also protect the revenue due to the Government. They had also recommended that Ministry of Finance should apprise them of the progress made in the disposal of all pending cargo in the light of the revised Procedure.

14. The Ministry in their Action Taken reply have stated that they had taken into account the recommendations made by the Task Force, Inter-Ministerial Group and accordingly, an appropriate mechanism for time bound disposal had been set up. Further, in order to avoid accumulation of such cargo, the Customs Act has been suitably amended to provide for a new Section 110A for immediate release of seized goods to its owner after taking required security. Further, in respect of goods which remain under the category of unclaimed/uncleared cargo, a separate set of instructions have been issued to put in place a permanent mechanism for expeditious disposal of the backlog of accumulated cargo and also to dispose off recurring uncleared / unclaimed goods in a time-bound manner. A separate working arrangement in each Port between Customs Administration and head of the Port Authority along with custodians of CFS have been set up for periodic meeting to work out solutions to various problems that may arise in the course of clearance of goods in the ports and ICDs/CFSs.

15. The Committee regret to note that despite the measures taken by the Government for expeditious disposal of unclaimed/uncleared cargo, the same had very little impact at the ground level *i.e.*, in ICDs/CFSs in clearance of the pending cargo. What is surprising to the Committee is the fact that even after the issue of instructions regarding setting up a permanent mechanism for expeditious disposal of the backlog of accumulated cargo, the position with regard to clearance of pending cargo in various Commissionerates has been far from satisfactory. From the details furnished by the Ministry, the Committee find that in respect of 3 Commissionerates *viz.* Chennai (sea port), Chennai (Prev.) (Trichy) and Amritsar Commissionerate a large number of cases are still pending for disposal. The situation is quite dismal in case of Chennai (Prev.) Commissionerate-Trichy, where out of 1017 containers that were stated to be pending as per Audit Report, only 32 could be disposed off and a large contingent of 985 containers are still to be disposed off. Further in respect of ICD, Tugulakabad, out of 618 containers that were pending for disposal, only 64 could be cleared and 554 containers are yet to be disposed off. These facts indicate that there is need to implement the procedure/guidelines in right earnest by the concerned agencies. The Committee, accordingly, reiterate that the Government should take all possible measures so that the cargo pending in various Commissionerates and ICDs/CFSs are disposed off within the stipulated period.

CHAPTER II

OBSERVATIONS/RECOMMENDATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

As per the extant instruction of Central Board of Excise and Customs (CBEC) contained in their Circular No. 50/97 of October, 1997 in respect of disposal of unclaimed/uncleared goods lying with Custodians, all goods that landed till 1.1.1994 and were lying uncleared/unclaimed were to be disposed of by Custodians even without NOC from Customs. For goods that landed between 1.1.1994 and 31.12.1996, it was prescribed that a monthly list of Cargo due for disposal was to be prepared and sent to Customs for NOC and if no intimation was received from Customs within 30 days Custodian was to presume that the former had no objection and could go ahead with disposal. Further, according to these instructions in respect of goods pending since 1997 a monthly list was to be sent to Customs for their permission to dispose of cargo within 30 days failing which the Custodian would be free to dispose of these goods. The Board vide their Circular No. 7/2004 dated 28.1.2004 further simplified the procedure for disposal of unclaimed/uncleared cargo landed upto 31.3.2003, wherein the waiting period for customs clearance/NOC has been reduced from 30 to 15 days.

Notwithstanding the simplified procedure prescribed by the Board from time to time, Audit scrutiny of records of 37 ICDs/CFSs in 13 Commissionerates had revealed that goods worth Rs. 540.47 Crore imported between 1985 and March 2003 were awaiting disposal for periods ranging from one to eighteen years resulting in blockage of duty amounting to Rs. 192.81 Crore apart from notional loss of interest of Rs. 58.41 crore. Out of this outstanding, there were a number of high money value cases pertaining to six Commissionerates *viz*., Chennai (sea), Tiruchirapalli, JNCH, Mumbai, Pune (Customs), Mumbai (sea) and Delhi. The total number of containers involved in these cases were 4748, which were valued at Rs. 514.97 crore and involved duty of Rs. 183.50 crore along with notional loss of interest of Rs. 55.79 crore. Thus, these high value cases involved 95% of duty blockage *i.e*. Rs. 183.50 crore from out of total duty of Rs. 192.81 Crore recoverable. In this connection, the Committee have been informed by the Ministry that in respect of Chennai (sea), out of 436 containers, 140 had been disposed of for Rs. 6.38 crore. Of the remaining 296 containers, 241 containers are pending due to court cases/CESTAT and under BIFR action/investigation. Only 55 containers involving 39 cases valued at Rs. 2.14 crore are stated to be still pending for disposal. As regards Tiruchirapalli, all the 1017 containers imported by a Public Sector Company were bonded due to non-clearance by the importer and are awaiting disposal action. In respect of JNCH, Mumbai, 1712 containers have been disposed of and out of balance 505 containers 333 are still under process of disposal. In so far as Pune Customs, out of 63 Twenty feet Equivalent Units, 21 have been disposed of and in respect of balance goods, the issue had been taken up by the Department and Custodians with the concerned Municipal Authorities for settling

the issue relating to payment octroi tax. As regards, Mumbai (Sea), unclaimed cargo consisted of only 111 Twenty feet Equivalent Units (TEUs) and 43 Less than full Container Load (LCL) cargo, out of which 44 TEUs and 19 LCL consignments were disposed of. The balance 67 TEUs and 24 LCLs were put to auction but could not be disposed of. In Delhi actual number of containers involved were only 854 for ICD-TKD and 28 for ICD (PPG). Out of these, 251 were disposed of, 384 containers pertain to hazardous waste which is a matter of litigation in Supreme Court and 103 containers were ripe for disposal.

The Committee regret to observe that even after a lapse of more than 3 to 11 years from the date of their importation, a large number of containers/TEUs in respect of above 6 Commissionerates are still awaiting disposal on the pretext of one or the other reason. No concrete action seems to have been taken by the Ministry/Board to expedite disposal of pending cargo. What is surprising is the fact that the Board was just content with issuing routine circulars asking the Commissionerates to speed up disposal of pending cargo. The Committee feels that the Ministry should have taken a pro-active role and closely monitored the dispsoal of cases on a case to case basis with respect to each Commissionerate where considerable backlog of cargo was pending disposal/clearance for several years. That this was not done is regrettable. While deploring the lackadaisical attitude of the Government, the Committee recommends that the Ministry should immediately direct the concerned Commissionerate to act swiftly in the matter to ensure early disposal of pending cargo. A definite time limit should be fixed for this purpose and any delay in this regard should be taken seriously and responsibility fixed both on the Custodian as well as the concerned officials of the respective Commissionerates.

(Sl. No. 3 of Appendix. V)
Para 60 of 27th Report of PAC

Action Taken

While taking note of the Committee's observation it is submitted that the Task Force constituted for the purpose of devising an effective monitoring mechanism for disposal of unclaimed/uncleared cargo has already examined in detail the present procedure. Based on the recommendations by it, Government have streamlined the mechanism for disposal of cargo as enumerated in detail in reply to Para 59.

Further, in respect of fixing definite time limit for the purpose of disposal of pending cargo, it is stated that following time limits for disposal of confiscated/ seized goods has been prescribed *vide* Board F. No. 711/16/2006-CUS. (AS) dated 17th August, 2006:

(i) All perishable goods be disposed of within three months of seizure.

(ii) All goods notified under Section 110 (1A) of the Customs Act, 1942 be disposed of within three months of the application under Section 110 (1B) having been allowed by the Magistrate, the permission to be obtained within two months of seizure.

(iii) All other sezied/confiscated goods be disposed of within three months of adjudication/appellate/court proceedings having concluded and the vesting of property of such goods in the Central Government having become final.

Similarly, in respect of unclaimed/uncleared goods, a maximum time period of one year has been allowed beyond which a specific step by step process has been laid down wherein the custodian will dispose of the goods without further reference to any other agency and with minimum supervisory interference by Customs. Thus the Committees recommendations regarding fixing a time limit has been taken into account in the above-prescribed procedure.

The progress regarding the position of uncleared/unclaimed goods lying with custodian reported in the para is as under:

(1) Under the jurisdiction of Chief Commissioner of Customs (DZ) New Delhi

Port	Total containers as per audit para	Disposal till December 05	Pendency in December 05	Disposal till November 06	Rev. Realized (Rs. in lakhs)	Current Penden closing balance
ICD, TKD	854	236	618	64	87.40	554
ICD, PPG	28	15	13	5	16.00	8

Out of 562 containers as mentioned above, 350 are under hazardous category, 122 are cases under Court/Appellate authority and "No objection certficates" have been given to custodians for 58 containers. No details are available with custodians for 29 containers, however, 2 are under confiscated category and 1 belongs to a diplomat.

As regards the hazardous cargo, the CBEC Circular No. 31/2004 dated 26.4.2004 deals with the matter of disposal of hazardous cargo. Monitoring Committee constituted under the 3 guidelines of hon'ble Supreme Court *vide* their letter dated 3.9.2004 had decided that with respect to hazardous waste, the representative (s) of Delhi Pollution Control Committee (DPCC) and Central Pollution Control Board (CPCB) shall verify the hazardous waste lying at ICD Tughlakabad in the light of findings of the Wadhwan Committee, and then decide and advise on the disposal option of the wastes keeping in view the directions of apex court, Samples were drawn from all the consignments, and the test results have been conveyed to the custodian (CONCOR), CONCOR has also forwarded the test reports to the Supreme Court Monitoring Committee. In this matter, CONCOR is in constant touch with DPCC and CPCB for inspection. However, these containers have not yet been examined as directed by SCMC. A meeting of the custodian *i.e*. CONCOR along with Customs is proposed to be undertaken with the CPCB and DPCC at senior level.

Out of 122 containers reported as held up due to court cases, it is ascertained that in cases of 86 containers, the dispute is between importer and custodian and no customs revenue is involved in these cases. In case of 2 containers, High Court of Punjab and Haryana has granted stay against clearance in a dispute between Bank and the importer. Thus, there are 34 containers held up due to cases pending in High Court/CESTAT and necessary application for early disposal of the cases is being made.

Regarding 29 containers under the category of undeclared cargo, CONCOR has been advised to undertake auction of these 29 containers next time. In the mean time, No objection Certificate from DRI for these containers is also asked for, if they have cases involving these containers.

Further as regards 5 containers lying at ICD, Patparganj:—

As regards 56 containers lying at ICD TKD for which NOC has been given by Customs, 11 containers have been put up for auction once, 41, containers are likely to put up in auction next time and 4 containers contain food stuff which has already expired shelf life (dry dates and almonds) and are liable for destruction.

Further as regards 5 containers lying at ICD, Patparganj:—

- For 2 containers NOC has been given to CWC, and will be put up for action next time.
- 1 container pertains to diplomat, for which concerned Embassy is being contacted and for 2 containers Commissioner of Customs (Preventive) Delhi) is taking up the necessary action for disposal.

(2) Under the jurisdiction of Chief Commissioner of Customs (JNCH and ACC): Mumbai Zone—II

After issuance of Circular No. 11/2006 Cus dated 16.02.2006, a total number of 216 containers were disposed off in the month of March and April (auction were conducted in month February/March and final disposal took place in month of March/April). Further, 59 E-auctions have been conducted in JNCH (this includes E-auctions conducted by CFS's) from January 2006 to October 2006 and a total of 9833 containers have been disposed off by the custodians. Out of these 9833 containers 1078 containers were sold in the auction and the remaining containers were cleared by the respective importers after completion of Customs procedures.

In Air Cargo Complex, website for conduct of e-auction was hosted in March 2006 but no bidders have registered till date. One of the custodians (M/s. Air India) is conducting e-auctions every alternate month.

As regards hazardous cargo of waste oil contained in 133 containers lying at JNCH has been disposed off through incineration under supervision of Supreme Court Monitoring Committee (SCMC). Under direction from SCMC the work of incineration was given to M/s. Mumbai Waste Management Ltd. (MWML), Plot No. P-32, MIDC Taloja, Dist. Raigad and the same has been completed. The Hon'ble Supreme Court and Supreme Court Monitoring Committee have been kept informed about this through affidavits filed before the Hon'ble Court.

The Disposal figures after issuance Circular/Standing Order from March/06 to October/06 is as follows:

JNCH

Sl.No.	Nature	No. of cases disposed off	Value of the cargo (in lacs)	Sale proceeds (in lacs)
01.	Time Expired	44	401.04	67.68
02.	Seized/Confiscated	15	444.30	35.99

ACC

Sl.No.	Nature	No. of cases disposed off	Value of the cargo (in lacs)	Sale proceeds (in lacs)
01.	Seized/Confiscated	74	128	31.05

(Disposal of time expired bond of Air Cargo Complex is done by New Customs House, Mumbai as Bond deptt. has started functioning in ACC only recently)

Commissioner of Customs, Pune

39 TEUS + loose cargo were pending as on 30.9.2005 valued at Rs. 69.40 crores. Out of which one TEU + loose cargo of total sale value of Rs. 24.41 lakhs and duty of Rs. 4.74 lakhs have been disposed off. Now as on 01.11.2006, 38 TEUS + loose cargo of total value of Rs. 62.74 crores are pending for disposal. CC (Pune) is vigorously pursuing the matter with the central warehousing corporation authorities, for speedy disposal of uncleared/unclaimed cargo. The major hurdle being faced by the custodian is the assessment of the octroi charges on the Book Value instead of the Bid Value/Sale value, by the jurisdictional municipal authorities, *i.e*. Pimpri Chinchwad Municipal Corporation. CC (Pune) has already taken up this issue with the concerned State Govt. department as well as the Pimpri Chinchwad Municipal Corporation authorities.

Confiscated/seized goods worth Rs. 5.30 crores are lying for disposal as on 31.10.2006. Out of which, goods worth Rs. 34 lakhs only are ripe for disposal. The goods having book value of Rs. 22.47 lakhs have been disposed for sale consideration of Rs. 18.67 lakhs during the period from June, 2005 to October, 2006.

Commissioner of Customs, Chennai (Preventive)

As regards the time-expired warehoused goods pertaining to M/s NOCL, due to financial constraints, NOCL had not cleared the goods nor they paid the interest accrued on the goods for granting the extension of bonding period. This being a mega project, reportedly only 50% of the machinery has been imported so far. With this partial imports erection of the proposed oil refinery is not feasible and NOCL is not de-bonding the available materials as remaining part of the equipment are yet to be imported. Of the 1017 containers, 32 containers have since been de-bonded by NOCL after filling ex-bond Bill of Entry and on payment of duty of Rs. 70 lakhs. The remaining 985 containers are yet to be de-bonded. The culmination of such action in disposing the goods through auction is not feasible by swinging in action since such a course would only fetch scrap value. The persuasion by the Department had resulted in de-bonding of 32 containers fetching revenue of Rs. 70 lakhs. The remaining/available goods are valued at Rs. 296.5 crores involving customs duty of Rs. 81.6 crores and it will be difficult to get a person interested in purchasing such a huge quantity of second hand refinery equipment at a reasonable price.

As pointed out by the Chairman, CBEC in the oral evidence before the PAC, These equipments are specifically tailor made for an oil refinery and the importer could not clear the goods because of his inability to arrange financial/equity closure of the

company/project. And it is a matter of subjective judgment whether Customs should wait for the clearance to be effected by the importer or it should be sold as metal scrap, since the goods are tailor made second hand refinery equipments for a specific project, which would fetch only a meagre value. This becomes more pertinent in view of the recent development reported by the company *vide* their letter dated 18th August 2006 that they have now achieved 100% equity closure with TATA sons, Sun Group and Under of Germany taking up substantial equity stakes in the project. Futher it is reported that the contracts for facility to be instated on BOOT basis are also finalized and company expects to get the financial closure of the project by tying up with the major public sector banks. The company has also pointed out *vide* their letter dated 18th August 2006 that they will be in a position to de-bond the cargo already brought in before the end of this calendar year with the above developments.

Under the jurisdiction of Chief Commissioner of Customs Chennai:

	No. of Containers		
Reasons for Pendency	In Terms of PAC Report	Disposed upto 1.11.2006	Balance as on 1.11.2006
Pending due to Court cases, CESTAT, BIFR, investigations	241	41	185
Others (under disposal)	55	19	51
TOTAL	296	60	236

Under the jurisdiction of Chief Commissioner of Customs Mumbai-I

16 containers of waste oil lying in Mulund CFS was destroyed in pursuance of Hon'ble Supreme Court's order by March 2006. Also, during this Financial Year, this Commissionerate has destroyed Narcotics worth Rs. 16 lakhs in co-ordination with the Waste Management Authorities.

Further NOC was given in respect of 456 lots comprising of 28,490 packages during the current year.

F. No. 442/12/2004-Cus.IV

Approved by Member (Cus.), CBEC

Sd/-

(Pawan Kumar Jain)
Addl. Director General.

Observation/Recommendation

Apart from cargo that is pending disposal with Custodians, Audit had pointed out cases of 115 containers valued at Rs. 35 crore and involving customs duty of Rs. 16.14 crore pending/locked up in court cases. Further, 25 containers valued at Rs. 1.21 crore and involving duty of Rs. 0.47 crore pending on account of these cases referred to Board for Industrial and Financial Reconstruction (BIFR), and 111 containers valued at Rs. 10.04 crore detained by Departmental Agencies *viz.*, Special Investigation and Intelligence Branch (SIIB)/Directorate of Revenue Intelligence (DRI)/Dock Intelligence Unit (DIU) for investigation. Due to delay in the adjudication of these cases, duty amounting to Rs. 4.75 crore was blocked. As regards the latest position with regard to disposal of these cases and the efforts made by the Board/Department to get the stay orders vacated, the Ministry have merely given an updated information on the number of cases of cargo pending along-with their value. The reply was conspicuously silent with respect of action taken/ efforts made for getting the stay orders vacated from court as well as expediting the investigation process by the Departmental Agencies in respect of cargo held under detention. The Committee urge upon the Ministry to ensure that Commissionerates are directed to take all possible efforts for speedy trial of Court/ BIFR cases. The Committee however, feel that there should not be any inordinate delay in cases of cargo that are pending investigation before SIIB/DRI/DIU which are Departmental Agencies. A definite time limit may be fixed for disposal of cases by these Agencies so as to protect the Government Revenue.

(Sl. No. 4 of Appendix.V)

Para 61 of 27th Report of PAC

Action Taken

On the issue of fixing a definite time limit for cases under investigation, it is submitted that under the Customs Act 1962, already a time limit of 6 months extendable for a further period of another 6 months for completion of investigation and issuance of Show Cause Notice exists. Similarly, for adjudication of the cases also a time limit exists.

Nonetheless, the observations of the Committee were taken note of by the Department and the following action has been taken:

(i) In cases involving seizure/confiscation of goods, department takes necessary penal action against offender by issue of notice and adjudication proceedings. At the same time in order to effectively dispose off the goods in time and to secure the interest of Revenue, the relevant provisions of the Customs Act, 1962 have been amended *vide* clause 26 of the Taxation Law Amendment Act, 2006 with effect from 14th July, 2006. Accordingly, under section 110A any goods, documents or things seized under section 110, pending investigation or the order of the adjudicating officer, can be released to the owner on taking a bond with security. This would ensure that the duty on the goods is collected at the time of such provisional release and the possible fine and penalty are safeguarded through the security.

(ii) The Custom Houses have been directed to constitute Special Task Forces to conduct a comprehensive review of all the consignments indicated as being "detained" by various investigation organizations such as DRI/SIIB/DIU for final disposal in terms of revised procedure for auction/tender.

(iii) Proper mechanism for interaction between the custodians and Customs to review the pendency of uncleared cargo has been set up. There will be a quarterly meeting between the Customs and Custodians at each Custom station to review the pendency of uncleared/unclaimed cargo and to update the status of the pending consignments. Further in such review meetings, the pendency with the custodian should be matched with the figures of uncleared consignments as per Customs records.

Instructions have been issued to the field formations to take a proactive approach on pending Court/Tribunal cases for speedy disposal by the field officers. Thus these provisions adequately take care regarding the recommendation of the Committee.

F. No. 442/12/2004-Cus.IV

Approved by Member (Cus.), CBEC

Sd/-

(Pawan Kumar Jain)

Addl. Director General.

Observation/Recommendation

Another disquieting feature has been the instances of delay in clearance of that cargo where there was no litigation. 1215 such containers of goods valued at Rs. 255.31 crore in various Commissionerates were not cleared timely leading to blockage of duty amounting to Rs. 59.27 crore. According to the Ministry, 157 such containers pertain to Chennai (Sea), 35 to Tuticorin, 1017 to Trichy and one case belongs to Coimbatore Commissionerate. Out of above cases with respect to Chennai (Sea), 102 containers had been disposed off and 55 are still pending. In respect of Tuticorin Commissionerate, all the 35 pending containers were stated to have been disposed off by March, 2005 through Public Auction. As regards Trichy, all the 1017 containers imported by a Public Limited Company (M/s. Nagarjuna Oil Corporation) were stated to be pending. In so far as Coimbatore Commissionerate, out of 22 cases of seized, confiscated, unclaimed and uncleared cargo that was pending disposal, 18 were disposed off and 4 consignments are still pending. The Committee further note that in Container Freight Station (Central Warehousing Corporation-Kolkata and Haldia) 74 consignments of goods of perishable nature valued at Rs. 4.44 crore were lying undisposed for a period ranging from 10 months to 6 years (December, 2003) resulting in blockage of revenue of Rs. 1.45 crore. In this connection, the Ministry have explained that out of 74 containers, 39 had been disposed off and 33 containers (11 in Haldia and 22 at Kolkata CWC) are lying uncleared. Despite a monitoring system/arrangement in place where under the Custodians periodically submit the list of uncleared/unclaimed goods, pending with them, to the jurisdictional Customs authorities and the same is

monitored by them, it is incomprehensible as to how a large number of cases of cargo/ containers were pending disposal with Custodians. Ironically the Task Force constituted in 2005 to suggest measures for expeditious disposal of imported unclaimed/uncleared/confiscated cargo, in their Report have observed that the existing departmental instruction on disposal by sale of unclaimed/uncleared and confiscated goods were clear and unambiguous and required no major revision/modification. The Task Force opined that had these instructions been strictly followed by Customs and Custodians, the position should have been that no confiscated goods older than six months and unclaimed goods landed earlier than 31.3.2003 would be lying unsold. The Committee are, thus, inclined to conclude that the instructions of Board are not being followed in letter and spirit by the Commissionerates. The Board also, after having issued the necessary instructions, did not seem to have bothered to ensure their strict compliance by the field officials. This reflects the sorry state of affairs prevalent in Board as well as in field units as regards to expeditious disposal of confiscated goods. Not only it is necessary to ensure strict compliance of instructions, the Board should examine the feasibility of evolving a system of periodical physical verification by an appropriate machinery of the cargo to be disposed of. For this, special cargo disposal cells may be set up in each of the Commissionerate.

(Sl. No. 5 of Appendix. V)

Para 62 of 27th Report of PAC

Action Taken

The Department has taken due note of the observations and the recommendation made by the Committee.

(i) As explained in earlier paragraph, each of the Custom Houses have constituted Special Cargo disposal cells, to conduct a comprehensive review of all the consignments pending disposal and reconcile the figures with the Custodian. However, if some of the old consignments cannot be connected with any records, then the details of such detained goods should also be intimated to the custodians who should put all such consignments for auction/tender in terms of the new simplified procedure. This time bound exercise would address the concerns expressed by the Committee and enable disposal of all pending cargo. The Chief Commissioners have been directed that these cells should also be specifically assigned the work of disposal of uncleared/unclaimed cargo as well as seized/confiscated including time expired warehoused goods.

(ii) Proper mechanism for interaction between the custodians and Customs to review the pendency of uncleared cargo has also been set up. A quarterly meeting between the Customs and Custodians at each Custom station is to be held to review the pendency of uncleared/unclaimed cargo and to update the status of the pending consignments. Futher in such review meetings, the pendency with the custodian would be matched with the figures of uncleared consignments as per Customs records.

(iii) Apart from the above measures at field level the following measures at the Board level are being taken to effectively monitor the disposal action at field level.

(a) The Monthly Report on uncleared/unclaimed cargo shall be compiled at Directorate of Logistics in addition to seized/confiscated cargo.

(b) For monitoring the disposal of uncleared/unclaimed cargo at Board level, Joint Secretary (Custom) shall be the nodal officer with secretarial assistance from Cus-IV section of CBEC. She shall obtain pendency/disposal reports from Dte. of Logistics on a quarterly basis and put up to Member (RI&I), CBEC for review.

(c) For monitoring the disposal of confiscated cargo at Board level, Commissioner (Anti-Smuggling) shall be the nodal officer with Secretarial assistance from AS section of CBEC. He shall obtain pendency/disposal reports from Dte. of Logistics on a quarterly basis and put up to Member (RI&I), CBEC for review.

The above measures will ensure the implementation of the remedial recommendations made by the Committee.

The further progress in respect of pending containers mentioned in the para is as under:

1. Chief Commissioner of Customs (Preventive), Chennai

As mentioned earlier, In respect of the case of NOCL, 1017 containers and 224 packages of second hand oil refinery machinery were imported and bonded during the period between 2001 and 2004. Of the 1017 containers, 32 containers have since been de-bonded by NOCL after filing ex-bond Bill of Entry and on payment of duty of Rs. 70 lakhs. The remaining 985 containers are yet to be de-bonded. The remaining/available goods are valued at Rs. 296.5 crores involving customs duty of Rs. 81.6 crores. As pointed out by the Chairman, CBEC in the oral evidence before the PAC, these equipments are specifically tailor made for an oil refinery and the importer could not clear the goods because of his inability to arrange financial/ equity closure of the company/project. And it is a matter of subjective judgment whether Customs should wait for the clearance to be effected by the importer or it should be sold as metal scrap. The company has also pointed out *vide* their letter dated 18th August, 2006 referred above, that they will be in a position to de-bond the cargo already brought in before the end of this calender year with the above developments.

2. Chief Commissioner Central Excise, Coimbatore

Out of the 22 cases of unclaimed and uncleared cargo 18 cases were already disposed off.

3. Chief Commissioner of Customs, Mumbai Zone-II

Disposal Cells have been set up in Air Cargo Complex and Jawaharlal Nehru Custom House to supervise the work relating to disposal of seized/confiscated goods and for

monitoring the work of custodian in the area of disposal of uncleared/unclaimed cargo. The disposal of time expired bonds is done by the Disposal Cell in JNCH whereas, the time expired bonds in Air Cargo Complex are disposed off by New Custom House as a separate Bond Department in ACC has been formed only recently.

4. Chief Commissioner of Customs, Kolkata

A Disposal Unit already functioning in the Custom House Kolkata for disposal of seized/confiscated goods and monitoring of disposal of uncleared/unclaimed cargo has not been re-designated as Special Disposal Cell. Specific Orders in this regard have been issued *vide* Standing Order dated 29/11/2006.

The present position of these 33 containers is as under:

(i) 17 containers have since been disposed of by the custodian CWC, Kolkata. Sale value of the goods disposed is Rs. 16.48 lakh; Customs duty realized is Rs. 3.13 lakh.

(ii) 5 containers are being disposed by CWC by way of destruction of the goods in them because these goods, mainly edible items have been declared unfit for human consumption. 11 containers are under process of disposal at Haldia.

F.No. 442/12/2004- Cus.IV

Approved by Member(Cus.), CBEC

Sd/-

(Pawan Kumar Jain)
Addl. Director General

Observation/Recommendation

The Committee note that out of 1215 containers of goods, which were free from litigation, a large consignment of goods *i.e.*, 1017 containers were stated to have been imported by a Public Limited Company (M/s. Nagarjuna Oil Corporation) during November, 1999 to September, 2000 and in April, 2001. These goods valued at Rs. 243.64 crore and involving duty of Rs. 53.79 crore, had remained uncleared in the bonded warehouse. The national loss of interest on account of blockage of customs duty was worked out to be Rs. 25.14 crore. Explaining the reasons for non-disposal, the Chairman CBEC stated during evidence that the equipment imported was specific for an Oil Refinery and the importer could not clear the goods because of his inability to arrange finances for payment of duty. According to him, it is a matter of subjective judgement whether customs should wait for the clearance to be effected by the importer or whether it should be sold at a scrap value. The Committee are concerned to note that there are no guidelines with regard to fixing cut-off period or time limit for disposal of goods in respect of such cases, where the importer/consignee could not clear the goods due to financial difficulties. During evidence, the Secretary (Revenue) had deposed that the Task Force constituted to suggest measures for expeditious disposal of uncleared/unclaimed and confiscated goods etc. would look into this

matter. However, the Committee now find that the Report of the Task Force is conspicuously silent in this regard. The Committee, would, therefore, recommend that in cases where imported cargo uncleared/unclaimed on account of non-clearance by the importer/consignee owing to financial difficulties or otherwise, Government should formulate guidelines for fixing time-limit/cut-off period, within which all the pending cargo should be disposed off.

(Sl. No. 6 of Appendix V)

Para 63 of 27th Report of PAC

Action Taken

The recommendation of the Committee for a time bound disposal of uncleared/ unclaimed cargo by prescribing a cut-off period was taken due note of and action initiated to check such delays in clearance of uncleared/unclaimed cargo.

Accordingly, the Department in the revised procedure prescribed for disposal of uncleared/unclaimed, seized/confiscated and time-expired warehoused cargo, specifically provided that auction/tender should be held every month. If the uncleared/unclaimed cargo is lying for more than a year, then these have to be necessarily sold for the highest bid in the last auction/tender, upto a maximum of four auction/ tenders, regardless of the reserve price fixed. Simultaneously, the Custodians have also been provided with an independent valuation mechanism to dispose off the uncleared/ unclaimed goods of less than one year old, without intervention from Customs.

Besides above, it may not be advisable to fix any specific time limit for disposal of time expired warehoused goods on account of financial difficulties of the importer. The specific case of Nagarjun Oil Corporation, a PSU is a case of exceptional nature where the disposal was not considered prudent as it would have fetched only scrap value and there were indications that importer was likely to clear the goods. This time bound mechanism for disposal of cargo is expected to rectify the lacunae pointed out by the Committee.

F.N. 442/12/2004-Cus.IV

Approved by Member (Cus.), CBEC

Sd/-

(Pawan Kumar Jain)
Addl. Director General.

Observation/Recommendation

One of the important pre-requisites for effective administration is to ensure proper monitoring of the system that is in place. Monitoring involves ensuring proper maintenance of prescribed records by the concerned authorities and to keep a close and continuous watch on the working of the system and also initiating timely and effective action in cases of default. For this, the Internal Audit Wing of a Department is expected to play an effective role. The Committee were given to understand that the role of Internal audit Wing of the Customs Department is limited to auditing of statutory

records relating to clearance of goods and payments of duty on imports and exports, maintained by the Department. It does not undertake audit of ICD/CFS in relation to checking of the records in respect of goods that were awaiting disposal. Even where the Department has admitted the role of Internal Audit, they have not performed their functions effectively resulting in cases of delayed/non-disposal of goods pending for disposal. The Committee, therefore, recommend that Internal Audit System in Customs Department should be revamped and strengthened so that they perform their role satisfactorily. Their scope and ambit should also be broadened so as to bring all the records of cases pertaining to non-disposal of cargo by the Custodian under their scrutiny/check.

(Sl. No. 7 of Appendix V)

Para 64 of 27th Report of PAC

Action Taken

The recommendation of the Committee for revamping the internal audit system in the context of audit clearance and disposal of goods has been taken note of.

Customs internal audit is done on the import transactions mainly in Customs EDI system taking into consideration the duty liability of the imported products, to ensure that the duty due has been paid correctly and in proper manner, prior to the clearance of goods. The Internal Audit as at present does not undertake the audit of the functioning of ICD/CFS and cannot therefore function as a check on the delayed disposal of goods, which are unclaimed/uncleared.

However, the Board has taken due note of the recommendation of the Committee for scrutiny of ICD/CFS. The monitoring of their functioning can be more appropriately carried out by an agency such as Directorate General of Inspection and their regional units to ensure that the goods remaining uncleared/unclaimed and their non-disposal is kept under proper scrutiny to avoid lengthy period when such goods lie undisposed. Suitable mechanism in this regard is being worked out by CBEC.

F.No. 442/12/2004-Cus.IV

Approved by Member (Cus.), CBEC

Sd/-

(Pawan Kumar Jain)
Addl. Director General.

Observation/Recommendation

Apart from non-disposal of uncleared/unclaimed cargo there also exist cases where there were inordinate delays in disposal of these goods ranging from six months to as much as fifteen years. The Ministry have attributed these delays by saying that the goods could not be disposed of early and repeated auctions had to be conducted to dispose them of. Another factor leading to such delays is stated to be the inability on the part of the Custodian in taking prompt and immediate action in disposal of goods that had become ripe for disposal. Though suo-moto action was required to be taken

by the Custodian for disposal of goods they unnecessarily chose to seek permission of the Customs Department to dispose of the goods thereby leading to considerable avoidable delays. The Committee desire that there should be close coordination between Custodians and Customs to ensure speedy disposal of goods. The monitoring mechanism for speedy/expeditious disposal of uncleared/unclaimed goods in the Customs Department also needs to be strengthened. For this, the Committee recommend that the CBEC should examine the feasibility of constituting a core group at the Board level, which should meet at regular intervals for monitoring the progress made in expeditious disposal of uncleared/unclaimed goods in various ICDs/CFSs.

(Sl. No. 9 of Appendix V)

Para 66 of 27th Report of PAC

Action Taken

The delay in disposal of goods by custodians and the role of customs in expediting the entire process of clearance of goods right from unloading thereof was studied by a core group. Accordingly, the following measures have been put in place for regular disposal of uncleared/unclaimed goods and for monitoring of the progress.

(i) The list of goods which have crossed the period of 30 days from the date of unloading to be discussed between custodian, customs and port authorities in regular meetings to sort out any problems arising thereof.

(ii) Monthly conduct of e-auction/tender at the Custom houses covering all type of goods. Wherever the custodian doesn't have the facility to dispose off regularly he could use the facility of e-auction of the Customs.

(iii) Directorate of Logistics who is compiling the monthly performance of disposal of goods would also reflect the performance of uncleared/unclaimed goods.

(iv) Board has further issued a Circular No. 11/2006 dt. 16.2.2006, stipulating that there would be a formal mechanism for interaction between the custodians and Customs to review the pendency of uncleared cargo and to reconcile the figures. It has been decided that there should be a quarterly meeting between the Customs and Custodians at each Custom station to review the pendency of uncleared/unclaimed cargo and to update the status of the pending consignments.

(v) Apart from the above measures at field level the following measures at the Board level are being taken to effectively monitor the disposal action at field level.

For monitoring the disposal of uncleared/unclaimed cargo at field level a nodal officer i.e Joint Secretary (Custom) has been appointed with secretarial assistance from Cus-IV section of CBEC to obtain pendency/disposal reports from Directorate of Logistics on a quarterly basis and put up to Member (RI&I), CBEC for review.

For monitoring the disposal of confiscated cargo at field level a nodal officer *i.e* Commissioner (Anti-Smuggling) has been appointed with secretarial assistance from

AS section of CBEC to obtain pendency/disposal reports from Directorate of Logistics on a quarterly basis and put up to Member (RI&I), CBEC for review.

These measures would enable suitable remedial action to be taken against erring custodians under various customs commissionerates by alerting the field formations.

F.N. 442/12/2004-Cus.IV

Approved by Member (Cus.), CBEC

Sd/-

(Pawan Kumar Jain)
Addl. Director General.

Observation/Recommendation

In terms of Section 126 of the Customs Act, 1962, ownership of confiscated goods vests in the Central Government which is required to promptly dispose them to avoid loss of revenue due to deterioration of quality, commercial value of the goods and excess expenditure incurred in the maintenance of the goods etc. Even in such cases, the Committee have come across considerable delays on the part of the Customs authorities. In eight Commissionerates, goods valued at Rs. 27.23 Crore involving duty of Rs. 10.74 Crore were confiscated between 1991-2003 and the same were awaiting disposal for periods ranging from 8 months to 12 years resulting in consequential loss of interest amouting to Rs. 3.64 Crore. During their recent visit to Kolkata Customs, the Committee were informed that there has been a lack of persistent follow up, in addition to legal incumbrances in the matter of disposal of confiscated/seized goods. The Committee were apprised that goods valued at Rs. 2.02 Crore were still awaiting disposal in their Commissionerates. The Committee regret to find that no specific timeframe has been prescribed for disposal of confiscated/seized goods. The Committee recommend that Ministry/Department should look into the matter with a view to find ways and means to simplify the procedures for expeditious disposal of cargo. Further, a time limit should also be fixed for all categories of confiscated/seized goods with a view to dispose them expeditiously.

(Sl. No. 10 of Appendix V)

Para 67 of 27th Report of PAC

Action Taken

The recommendation made by the Hon'ble Committee was taken due note. As stated earlier the entire process of disposal of goods, including the confiscated/ seized goods, were studied in detail. Accordingly, two-pronged strategy was adopted to address the issues pointed out by the Hon'ble Committee. One, a revised procedure for simplified valuation for time bound disposal of goods have been prescribed. In this disposal process, it has also been prescribed that if the confiscated goods which are ripe for disposal, are not sold in auction for the third time, then such goods would be disposed of at the highest bid in the third auction, thereby making it mandatory for time bound disposal of goods.

These measures would ensure that the goods are disposed of timely and the further action for disposal of goods is methodical resulting in timely disposal. However, it is reiterated that the Department can dispose of confiscated goods, which are 'ripe for disposal' *i.e.* clear ownership of goods lie with the Government after adjudication and appellate proceedings. The process and procedure of confiscation itself involves passage through various stages like investigation, issuance of show cause notice, observance of the principles of natural justice for adjudication and appeal before different appellate forums. While the department may expedite investigation and adjudication proceeding, appellate stages may take its time for any final decision. As regards the recommendation, instructions dated 17th August 2006 have been issued to the field formations directing that all perishable goods be disposed of within three months of seizure.

All goods notified under Section 110 (1A) of the Customs Act, 1942 be disposed of within three months of the application under Section 110 (1B) having been allowed by the Magistrate, the permission to be obtained within two months of seizure.

All other seized/confiscated goods be disposed of within three months of adjudication/appellate/court proceedings having concluded and the vesting of property of such goods in the Central Government having become final.

In order to effectively dispose of the goods in time and to secure the interest of Revenue, the relevant provisions of the Customs Act, 1962 have been amended by clause 26 of the Taxation Law Amendment Act, 2006 with effect from 14th July, 2006. Accordingly, under section 110A any goods, documents or things seized under section 110, pending investigation or the order of the adjudicating officer, can be released to the owner on taking a bond with security. This would ensure that the duty on the goods is collected at the time of such provisional release and the possible fine and penalty are safeguarded through the security.

Thus above provisions take care of the committee's recommendations. The same shall be monitored at Board level as per the arrangements prescribed in earlier paras.

The further progress in the respect of pending containers mentioned in the para is as under:

Custom House, Kolkata has conducted the first e-auction on 23rd August 2006. Three more auctions have thereafter been conducted for Port and upto October, a total of 13 lots having book value of Rs. 7.16 cr. and fair value of Rs. 1.73 cr. were sold by e-auction and an amount of Rs. 2.16 crore was realized from the sales. In the 4th e-auction done on 20.11.06, a total of 5 lots having book value of Rs. 5.73 cr. and fair value of Rs. 2.61 cr. were sold by e-auction (i.e. the bids have been accepted) and an amount of Rs. 4.12 crore is expected to be realized from the same within November. Efforts are on to dispose of the remaining goods (worth book value of Rs. 30.04 cr., out of which goods worth Rs. 5.73 cr. already finalized for sale in the aforesaid 4th auction, but will be reported only after sale proceeds are realized) within this calendar year.

F.No. 442/12/2004-Cus. IV

Approved by Member (Cus), CBEC

Sd/-

(Pawan Kumar Jain)
Addl. Director General.

Observation/Recommendation

The Committee find that in Delhi Commissionerate (ICD, TKD) imported goods such as brass dross/eckart ink were put for auction and when they could not be sold in the first auction they were again put for repeated auction in the next four auctions. After the fifth auction, the said item was declared as restricted by the Department. In a written information furnished to the Committee, the Ministry while admitting the lapse stated that the No Objection Certificate was inadvertently issued overlooking the aspect that the goods in question were allowed only to units registered with the Ministry of Environment & Forests, Government of India and by the actual user condition. Such serious lapse on the part of the Board/Department has revealed deficiencies in the procedures and monitoring systems in clearance of the goods for disposal. Such avoidable lapses render considerable loss of time and money to the exchequer in terms of expenditure incurred on auction. The Committee recommend that the procedures/guidelines involved in examination/scrutiny of cargo before their clearance for disposal, should be reviewed in their entirety. The management information system in this regard should be strengthened and periodically reviewed so that such lapses do not recur in future.

(Sl. No. 11 of Appendix V)

Para 68 of 27th Report of PAC.

Action Taken

The Recommendation made by the Hon'ble Committee was taken into due account while revising the procedure for examination and disposal of goods. Further, based on the study conducted by the Task Force, it is specifically provided in the instructions that Customs shall scrutinize the list of unclaimed/uncleared goods which are being intimated by the custodian, segregate the list of disputed or stayed consignments or consignments required to be retained for any investigation/adjudication/court proceedings, motor vehicles or negative list items as restrictions imposed under allied acts. However, in order to give certainty and to avoid the situations like the one cited in the above case, it is also provided that if no such intimation is received from the Customs within 15 days, the custodian shall go ahead with the disposal of the goods. A separate working arrangement in each Port between Customs Administration and head of the Port Authority along with custodians of CFS has been set for meeting at least once a month to work out solutions to various problems that may arise in the course of clearance of goods. The information provided by the custodian regarding unclaimed/uncleared goods is to be reviewed by the jurisdicational Commissioner of Customs from the disposal through E-auction by the Customs Zones are reported to the Board. Accordingly, it is stated that the said information flow at the local and central level would enable periodical review of the disposal of uncleared/unclaimed goods, seized/confiscated goods.

F. No. 442/12/2004-Cus.IV

Approved by Member (Cus), CBEC

Sd/-

(Pawan Kumar Jain)
Addl. Director General.

Observation/Recommendation

In yet another case export goods i.e. ready-made garments, compact disc, hand tools and electronic goods worth Rs. 63.15 crore which entered for export between 1985 and 2003 were lying in the export shed in Delhi Commissionerate as unclaimed/detained/ confiscated/seized. Non-disposal of such items, having short span of life, resulted in their commercial value being lost leading to loss of revenue amount of Rs. 49.88 crore apart from blocking of revenue amounting to Rs. 13.27 crore on other goods. The Ministry have contested this Audit finding by saying that the goods under question were not seized or confiscated. Some of them were connected with investigation by Customs and the remaining were abandoned export goods over which customs had no claim. It has been contended that abandoned export goods did not come either under the category of seized or confiscated goods and therefore their non-disposal did not involve any revenue loss. The Committee are of the opinion that since the abandoned goods occupy considerable space of the godowns of ICDs/CFSs thereby involving opportunity cost, it is imperative that **the status of abandoned goods should be properly defined and appropriate amendments to this effect should be made in the Customs Act, 1962 so as to recover the costs involved in their maintenance. The Board should also formulate guidelines/instructions with respect to the modalities for their disposal.**

(Sl. No. 12 of Appendix V)

Para 69 of 27th Report of PAC

Action Taken

The point mentioned in the recommendation of the Hon'ble Committee was taken note of. In order to clarify the scope of unclaimed/abandoned goods and to dispose of such goods in a time bound manner necessary changes in the Customs Act and instructions have been issued.

In respect of goods entered for exportation, it has been specifically provided that except for prohibited/contraband goods, all such goods should be allowed for exportation including seized goods released provisionally. In respect of imported goods, it has also been provided that the importer shall not be allowed to abandon his title to such goods where an offence appears to have been committed under the Customs Act by making suitable amendments in Sections 23 and 68 of the Customs Act, 1962 through the Finance Act, 2006. In respect of all other goods, both imported and exported goods, where there is no violation of Customs Act is involved, the custodian has been fixed with the responsibility for disposal of goods exclusively by them without intervention by Customs. This would enable disposal of abandoned goods immediately by the custodian after giving due notice to the importer/exporter. However, if there is any offence involved, such goods will not be allowed to be abandoned and would be seized/confiscated for necessary action and moved to the Customs warehouse. This would ensure that abandoned goods shall not occupy unnecessary space at CFS/ICD and that the goods are disposed of in a timely manner.

F. No. 442/12/2004-Cus. IV

Approved by Member (Cus), CBEC

Sd/-

(Pawan Kumar Jain)
Addl. Director General.

Observation/Recommendation

In January, 2004 the Ministry of Finance are stated to have introduced e-auction system at field level with the objective of providing time efficient and transparent procedure for disposal of cargo. The e-auction software is presently being implemented in Chennai, Mumbai II and Bangalore Commissionerates. As regards its status of implementation, the Ministry have informed that e-auction had helped in facilitating a time-bound and efficient mechanism for disposal of cargo and also eliminated cartelization in auction procedure and the same would be implemented in other Commissionerates in a phased manner. **The Committee expect the Ministry of Finance to take necessary steps to Introduce/Implement e-auction in all the Commissionerates in a time-bound period. They also hope that e-auction would cut red tape and simplify the procedures in clearance/disposal of the uncleared/ unclaimed goods in an expeditious manner so as to safeguard the revenue of the Government. The Committee would also like to be apprised of the further progress made in this regard.**

(Sl. No. 14 Appendix V)

Para 71 of 27th Report of PAC.

Action Taken

CBEC have issued instructions regarding disposal of goods through e-auction to all Customs field formations on 6th October 2005. Such e-auctions cover confiscated goods, time-expired warehoused goods as well as uncleared/unclaimed cargo lying with the custodians, which are required to be disposed of under section 48 of the Customs Act, 1962. After issue of these instructions, e-auctions with simultaneous tenders are being regularly held at the respective Custom Houses.

As regard the recommendation, Ministry has further issued instructions vide letter F.No. 711/1/2006-Cus (AS) dated 20th February 2006 to the field formations directing to introduce-e-auction for seized/confiscated goods within 100 days of the issue of the letter. Of the 12 Customs Zones, e-auction has been implemented in 10 Zones and it is in the process of being implemented in the other two Zones. So far, goods valued at Rs. 60 crore approximately have been disposed of through e-auction.

However, it is felt that the localized e-auctions are not sufficient to overcome the problems of the cartelization of bidders and bidding low amounts of high valued auction even in the third auction and there is a need for E-auction on a central portal as it would provide a wider base of bidders that would reduce the chances of any cartelization and fetch a better price for the goods auctions. To obviate this lacuna, steps are being taken to create an All India E-auction portal, which is proposed to cater to the disposal of un-cleared/unclaimed cargo as well.

Details of disposal through E-auction

In this regard, as a part of key area of performance the value of goods disposed and amount of duty realized were monitored in the Central Board of Excise & Customs

(CBEC) through monthly reports sent by Commissionerates. The past performance of the field formations in the previous period is given below:

Period	No. of auction conducted	Value of goods disposed in e-auction (Rs. in crore)
November, 2005	29	10.43
December, 2005	22	10.06
January, 2006	16	10.74
February, 2006	27	12.03
March, 2006	40	22.43
2006-07		
April, 2006	9	5.19
May, 2006	15	1.66
June, 2006	18	7.00
July, 2006	17	7.48
August, 2006	23	15.47
September, 2006	08	8.76

F. No. 442/12/2004-Cus. IV

Approved by Member (Cus), CBEC

Sd/-

(Pawan Kumar Jain)
Addl. Director General.

Observation/Recommendation

The Committee are informed that a Task Force headed by Chief Commissioner of Customs, New Delhi and comprising of Chief Commissioner of Customs of different zones was set up by the Ministry of Finance of 27th June, 2005 to suggest administrative measures including monitoring mechanism for clearance of cargo lying undisposed/uncleared/unclaimed or confiscated beyond specific period of time, in an expeditious manner, by effective use of IT sources, appropriate development of manpower etc. The Committee regret to observe that the subject-disposal of uncleared/ unclaimed/confiscated cargo seems to have been neglected by the Department/Board until audit conducted a review on the working of ICDs/CFSs and Public Accounts Committee took up the subject for detailed examination. It is only after that the Ministry woke up to the problem and constituted a Task Force. The Committee are of the opinion that had the Ministry seized of the problem and taken corrective measures well in advance, things would not have come to such a pass.

The Task Force had submitted its Report in September 2005. Important recommendations made by the Task Force are stated to be as under:—

The procedure laid down in the last Circular dated 28.1.2004 should be put in place as a permanent measure. However, the procedure should be made applicable only to unclaimed/uncleared cargo landed at least one year prior to the date on which the list of goods for customs "no objection" is prepared. The total number of auctions/tenders to which a lot is subjected should be four, with the goods to be necessarily sold for the highest bid in the last auction/tender regardless of the reserve price fixed.

All other Custom Houses should mandatorily introduce e-auctions utilizing the software developed by Chennai custom House within 100 days of the Task Force report being approved by the Board. The physical auctions should be altogether discontinued once the e-auction has become operational. Such e-auctions would not only cover goods confiscated by Customs or time-expired warehoused goods but also to uncleared/unclaimed cargo lying with the custodians required to be disposed of under Section 48.

The Customs Act, 1962 should be amended to provide that if the importer does not avail of the option given to him for taking delivery of the goods on a provisional basis, the Department may offer the goods for sale in public auction after giving a notice of say 30 days to the importer. The sale proceeds should be kept in a fixed deposit with the nationalized bank until the case is decided and the proceeds be disposed of depending on the final outcome.

As a follow up of Task Force Report, the CBEC have issued two circulars on 1st and 9th December, 2005 prescribing a revised Procedure for expeditious disposal of unclaimed/uncleared cargo under Section 48 of the Customs Act lying with the Custodians–both Public and Private. The Committee hope that the revised Procedure prescibed by the Board in the light of Task Force Report would cut down the delays and enable the Custodians to dispose unclaimed/uncleared **goods expeditiously and also protect the revenue due to the Government. They also recommend that Ministry of Finance should apprise them of the progress made in the disposal of all pending cargo in the light of the revised Procedure.**

(Sl. No. 15 of Appendix. V)

Para 72 of 27th Report of PAC

Action Taken

As noted by the Hon'ble Committee in respect of disposal of unclaimed/uncleared, confiscated/seized goods, the Ministry had taken into account the recommendations made by the Task Force, Inter Ministerial Group and accordingly, appropriate mechanism for time bound disposal has been set up. Further, in order to avoid accumulation of such cargo, the Customs Act has been suitably amended to provide for a new Section 110A for immediate release of seized goods to its owner after taking required security. Further, in respect of goods which remain under the category of unclaimed/uncleared cargo, a separate set of instructions has been issued to put in place a permanent mechanism for expeditious disposal of the backlog of accumulated cargo and also to dispose of recurring uncleared/unclaimed goods in a time-bound manner. A separate working arrangement in each Port between Customs Administration

and head of the Port Authority along with custodians of CFS have been set up for periodic meeting to work out solutions to various problems that may arise in the course of clearance of goods in the ports and ICD/CFS.

The progress made in the disposal of the pending cargo after the instructions were issued enclose as Annexure.

F.No. 442/12/2004-Cus. IV

Approved by Member (Cus), CBEC

Sd/-

(Pawan Kumar Jain)
Addl. Director General.

ANNEXURE

Sl. No.	Name of the Commissionerate	No. of Containers pending disposal as per Audit Report	No. of containers disposed of	No. of cases pending
1.	Commissioner of Customs, Mumbai (General)	(i) 67 TEUs (ii) 24 LCL	(ii) 67 TEUs (ii) 21 LCL	NIL 3
2.	Mumbai (II)	333	152	181
3.	Chennai (Sea Port) (Import & Export)	296	60	236
4.	Delhi (DZ) ICD, TKD ICD, PPG	 618 15	 64 5	 554 8
5.	Chennai (Prev.) Trichy Tuticorin	 1017 1	 32 1	 985 NIL
6.	Kolkata CWC, CFS Balmer & Lawrie	 33 33	 17 33	 16 NIL
7.	Ahmedabad	12	9	3
8.	Amritsar	275	175	100
9.	Bangalore			
10.	Mangalore (Customs)	11 (cases)	8 (cases)	3 (cases)
11.	Coimbatore	22 (cases)	19 (cases)	3 (cases) Not in working condition/ deteriorated

CHAPTER III

OBSERVATIONS/RECOMMENDATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE REPLIES RECEIVED FROM GOVERNMENT

Observations/Recommendations

An Inland Container Depot (ICD) or Container Freight Station (CFS) is a common user facility, which offers services for handling and temporary storage of import/ export goods. They were established in order to facilitate the clearance of import and export goods of dry port. Under Section 45 of the Customs Act, 1962, the Commissioner of Customs approves a Custodian under whose custody all the imported goods unloaded in customs area remains till they are cleared from ICDs/CFSs for home consumption, warehoused or transshipped. The clearance/disposal of uncleared and unclaimed goods is to be initiated and carried out by the Custodian as per the instructions in vogue.

(Sl. No. 1 of Appendix. V)

Para 58 of 27th Report of PAC

Action Taken

No comments.

F.No. 442/12/2004-Cus. IV

Approved by Member (Cus.), CBEC

Sd/-

(Pawan Kumar Jain)
Addl. Director General.

Observations/Recommendations

The Committee's examination of the subject is based on the Audit Review on the working of Inland Container Depots (ICDs)/Container Freight Stations (CFSs) in relation to clearance/disposal of uncleared/unclaimed cargo on payment of appropriate customs duty to the Government. For this, Audit had conducted test-check of records of customs as well as custodians *i.e*., ICDs/CFSs located in 13 Commissionerates for three years *i.e*., 2000-01 to 2002-03 with the objective of assessing whether Revenue due to the Government *viz*., duty on uncleared/unclaimed goods at ICDs was recovered in time. **The Committee's examination of the subject has revealed a number of deficiencies in the system. There have been instances where the prescribed rules/regulations and procedure have not been followed in respect of disposal of uncleared/unclaimed goods leading to inordinate delay in their disposal and consequent non-recovery/delay in recovery of customs duty on auctioned**

goods etc. The existing monitoring mechanism in the Ministry/Department in respect of functioning of ICDs/CFSs, also seem to be very weak and ineffective. These issues have been discussed in detail in the succeeding paragraphs.

(Sl. No. 2 of Appendix. V)

Para 59 of 27th Report of PAC

Action Taken

While the action taken is explained in individual paragraphs, in the overall perspective, it is submitted that for monitoring of goods lying uncleared/unclaimed in ICDs/CSFs and disposal of the same, the department has taken a number of measures to strengthen and expedite the process of disposal as detailed below.

1. Task Force:

As a sequel to the review of the C&AG, the Central Board of Excise and Customs appointed a Task Force *vide* order F.No. 442/12/2004-Cus.IV(Pt) dt. 27.6.2005 to examine the various issues arising out of the audit review, and to suggest effective measures for implementation to dispose expeditiously. The Task Force comprised the Chief Commissioners of Customs, Mumbai-I, II, Chennai and Kolkata as its members with the CC, Delhi Zone as its Chairman.

The Task Force in its report suggested various measures, *inter alia,*

A circular to be issued dealing with time-expired warehoused goods, definition of Reserve Price, simultaneous auction-cum-tender to be compulsorily held every month, appointment of a joint pricing committee and panel of valuers, compulsory disposal at below reserve price at the third auction-cum-tender, etc.

Another circular to be issued adopting the procedure laid down in Ministry's Circular No. 7/2004 as a permanent measure with the modifications such as (i) Custodian is responsible for disposal of only unclaimed/uncleared cargo of more than one year; (ii) no role of customs on the valuation even if on the request of custodian and (iii) compulsory disposal at the fourth auction-cum tender even at below reserve price; (iv) procedure to deal with hazardous waste.

2. CBEC Circulars:

After a careful consideration of the report of the Task Force, CBEC has issued Circular No. 50/2005 dt. 1.12.2005 as amended by Circular No. 52/2005 dt. 9.12.2005 and another Circular No 11/2006 dt. 16.2.2006 for disposal of unclaimed/uncleared cargo under section 48 of the Customs Act, 1962, lying with the custodians.

(a) Circular No. 50/2005 dt. 1.12.2005 as amended by Circular No. 52/2005 dt. 9.12.2005:

The salient features laid down in the above circular are as follows:

Regarding unclaimed/uncleared cargo landed at least one year prior.

(i) The custodian will furnish the list of items to be considered for disposal of customs. A notice shall be issued by the custodian to the consignee and also displayed on the notice board.

(ii) Customs shall scrutinize the list of disputed or stayed consignments or consignments required to be retained for any investigation/adjudication/court proceedings.

(iii) The responsibility for the disposal shall exclusively be with the Custodian who shall fix a reserve price arrived at by a panel of Government approved valuers appointed by the Custodian.

(iv) The customs shall choose 10% consignments for which detailed inventory shall be made in their presence for sample check.

(v) The disposal of the goods shall be made by public auction/E-auction/tender. The maximum number of auctions/tenders to which a lot is subjected should be four, with the goods to be necessarily sold for the highest bid in the last auction/tender regardless of the reserve price fixed. Reserve price fixed would not be applicable in case of fourth auction/tender.

(vi) Guidelines issued by the Central Vigilance Commission are to be followed.

Regarding uncleared/unclaimed goods lying for a period less than one year

(i) Custodian would get the reserve price fixed by a panel of Government approved valuers appointed by the Custodian. Customs shall not associate itself with the valuation of the goods lying uncleared with the custodian. However, both reserve price and bids would be approved by the Customs.

(ii) If these goods remain unsold and pass into the category of landed-more than-one-year-prior, then the custodians can sell the same following the independent procedure as detailed in (a) above, without any reference to customs, and adjusting the number of auctions/tenders to which the lot was already subjected to against the prescribed number of four such auctions/ tender.

(b) Circular No. 11/2006 dated 16.2.2006:

The measures laid down in the above circular are:

(i) One time interim administrative measure, for disposal of all lots of unclaimed/uncleared goods pending for disposal for more than one year which have undergone auctions/tenders at least 3 times by the custodians and which are still lying unsold, are to be offered for final tender once more and the highest bid received to be accepted by the department. This process was to be completed by 31st March, 2006.

(ii) Disposal of goods through e-auction/tender conducted regularly every month.

(iii) All consignments of hazardous waste are to be disposed off in terms of Ministry's Circular No. 31/04 dated 26.4.2004 laying down the guidelines given by the Supreme Court.

(iv) Each Custom House will constitute a Special Task Force to conduct a comprehensive review of all the consignments indicated as being "detained" by the respective custodians.

(v) The Board has further decided that there would be a formal mechanism for interaction between the custodians and Customs to review the pendency of uncleared cargo and to reconcile the figures. It has been decided that there should be a quarterly meeting between the Customs and Custodians at each Custom station to review the pendency of uncleared/unclaimed cargo and to update the status of the pending consignments.

(c) Circular No. 12/2006 dt. 20.2.2006:

Based on the recommendations of the Task Force, CBEC has further issued another Circular No. 12/2006 dt. 20.2.2006 for the valuation and disposal by auction-cum-tender of seized, confiscated and time-expired goods. The review by Audit has covered the confiscated goods also, lying with the custodians.

The measures prescribed in the above circular are:

(i) The disposal by sale of seized, confiscated and time-expired warehoused goods shall take place simultaneously through public auction and sealed tender, every month.

(ii) A Joint Pricing Committee (JPC) shall be constituted in each Customs Commissionerate charged with the responsibility of disposal of seized and confiscated goods.

(iii) The JPC shall determine the Fair Price of the goods to be disposed of through auction-cum-tender. The Fair Price is the best price at which the goods can be sold under normal conditions. It can be expected to be somewhat lower than the price at which goods of the same kind and in the same condition could be sold by the buyer in the wholesale market, the difference representing the profit which the buyer at the auction expects to make.

(iv) There shall be no Reserve Price as distinct from Fair Price.

(v) The wholesale market price of the goods offered for sale and the margin of profit shall be ascertained by Government Approved Valuers alone and not by Customs staff.

(vi) The highest bid in the auction-cum-tender shall be accepted by the JPC. In the event of the goods not being sold in the first two auction-cum-tenders, the goods shall be sold at the highest bid obtained in the third auction-cum-tender.

(vii) The goods should not be withdrawn from auction-cum-tender on filmsy grounds, such as the possibility that the goods may fetch a slightly higher price in a subsequent auction.

(viii) All post-auction/tender offers, even if these are for amounts higher than the successful bid, shall be strictly disregarded and not taken congnizance of in any manner.

(ix) In respect of complaints regarding determination of Fair Price and acceptance of bids in auction-cum-tender, the Commissioner shall immediately ascertain whether the prescribed procedure has been adhered to. The matter should not be referred for Vigilance scrutiny in a routine manner if the prescribed procedure has been followed.

(x) All Custom Houses shall immediately introduce e-auction.

3. Amendment in Customs Act, 1962:

In order to effectively dispose off the goods in time and to secure the interest of Revenue, the relevant provisions of the Customs Act, 1962 have been amended *vide* clause 26 of the **Taxation Law Amendment Act, 2006** with effect from 14th July, 2006. Accordingly, under section 110A any goods, **documents or things seized under section 110, pending investigation or the order of the adjudicating officer, can be released to the owner on taking a bond with security.** This would ensure that the duty on the goods is collected at the time of such provisional release and the possible fine and penalty are safeguarded through the security.

4. Special Disposal Cells:

As a follow-up of the recommendation of the Task Force, Special Disposal Cells have already been created in the Custom Houses for effectively monitoring the disposal which are specifically assigned the work of disposal of uncleared/unclaimed cargo and seized/confiscated goods including time-expired warehoused goods.

5. Monitoring mechanism in the Ministry:

After reviewing the existing monitoring mechanism in the Ministry, the following monitoring mechanism is being devised.

(i) The Monthly Report on uncleared/unclaimed cargo shall be compiled at Dte. of Logistics in addition to seized/confiscated cargo.

(ii) For monitoring the disposal of uncleared/unclaimed cargo at Board level, Joint Secretary (Custom) shall be the nodal officer with secretarial assistance from Cus-IV section of CBEC. JS shall obtain pendency/disposal reports from Dte. of Logistics on a quarterly basis and put up to Member (RI&I), CBEC for review.

(iii) For monitoring the disposal of confiscated cargo at Board level, Commissioner (Anti-Smuggling) shall be the nodal officer with secretarial assistance from AS section of CBEC. He shall obtain pendency/disposal reports from Dte. of Logistics on a quarterly basis and put up to Member (RI&I), CBEC for review.

The aforesaid measures have already resulted into reduction in pendency of disposal as discussed in subsequent paras. These measures are likely to strengthen and expedite the disposal of cargo by streamlining the procedures and sensitizing the officers for expeditious disposal.

F.No. 442/12/2004-Cus.IV

Approved by Member (Cus.), CBEC

Sd/-

(Pawan Kumar Jain)
Addl, Director General.

CHAPTER IV

OBSERVATIONS/RECOMMENDATIONS IN RESPECT OF WHICH REPLIES OF GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

—NIL—

CHAPTER V

OBSERVATIONS/RECOMMENDATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM REPLIES

Observation/Recommendation

Under the extant rules/arrangements, responsibility for clearance/disposal of goods lies with the custodian and the role of Customs in disposal of cargo is to examine the status of cargo and give permission to Custodians when sought for under the Customs Act. The Committee are informed that in case of non-fulfillment of the obligations by the Custodians the concerned Commissioner of Customs can cancel the approval given to him to operate/ICDs/CFSs. However, no detail Rules empowering the Customs to take any punitive/deterrent action against the Custodians in such cases have been framed. Further, no safeguards for protection of Revenue in cases of negligence or violations of the conditions/guidelines by the Custodians exist in the Customs Act. **The Committee feel that Government should formulate appropriate rules and guidelines to control the activities of the Custodian so that in the event of their failure to adhere to the obligations, the Department/ Board can take suitable punitive action against the erring Custodians so that revenue could be protected. For this, if necessary, the Customs Act, 1962 may be amended.**

(Sl. No. 8 of Appendix V)

Para 65 of 27th Report of PAC

Action Taken

The recommendation of the Committee for controlling the activities of the ICD/ CFS has been noted. It is submitted that the ICDs/CFSs, while being appointed as custodians of the goods, are subjected to certain conditions. These relate to provision of safe, secure and spacious premises for loading/unloading in storage of cargo, modern facilities for material handling, supporting equipments, EDI connectivity, proper insurance of the goods stored, undertaking to bear the duty on goods lost or pilfered and to abide by all rules and regulations under the Customs Act. The main obligations of the custodian is to properly account for the goods, keep them under safe custody, provide efficient clearance process and for compliance with the Customs Act, 1962 and other acts, rules and regulations in force thereof. Non-fulfillment of the above would make them liable for penal action and termination of custodianship, which is enforced in specific cases following due process of principles of natural justice.

However noting the Committee's suggestion, it is submitted that a separate team of officials at Mumbai and Chennai under the supervision of Chief Commissioner Mumbai-II and Chief Commissioner Chennai (Sea) have been directed to examine the entire gamut of provisions relating to ICD/CFS and come up with a proposal of

amendment to Customs Act, 1962 by way of introduction of a specific self-contained chapter including penal provisions relating to functioning of ICD/CFS. They shall be submitting the report by 15th January, 2007. After receipt of the report necessary changes required shall be incorporated in the Custom Act, 1962.

F. No. 442/12/2004-Cus. IV

Approved by Member (Cus), CBEC

Sd/-

(Pawan Kumar Jain)
Addl. Director General.

Observation/Recommendation

The Committee are deeply perturbed to note that an atmosphere of non-accountability is prevailing in the entire system of disposal of pending cargo. While Customs Department have no powers to take action against the Custodians for inordinate delay in disposal of cargo, the Ministry/Board have also shirked their responsibility to fix responsibility on the concerned officials for delay in disposal of goods on the plea that it is the Custodian who is responsible for disposal of pending cargo. With a view to address this problem, the Committee recommend that **Ministry of Finance should constitute a high level Committee comprising of members of the CBEC and other experts on the subject, to go into the entire gamut of functioning of ICDs/CFSs and Customs Commissionerates, in relation to disposal of pending uncleared/unclaimed goods and also to investigate into the causes for inordinate delay in disposal of cargo, on a case to case basis and fix responsibility on the concerned Customs officials and the Custodians.**

(Sl. No. 13 of Appendix V)

Para 70 of 27th Report of PAC

Action Taken

As suggested by the Hon'ble Committee, an Inter Ministerial Group (IMG) consisting of the representatives of Ministry of Shipping, Commerce & Industry, Planning Commission and Department of Revenue, Ministry of Finance had studied the issues concerning ports and ICD/CFS, in order to streamline Customs procedure and simplify the same. The recommendations made by the Inter Ministerial Group will bring about an efficient and facilitative environment for expeditious customs clearance of cargo. The procedural simplification recommended for disposal of confiscated and uncleared/unclaimed goods would enable expeditious disposal of such cargo and reduce congestion and bottlenecks at the ports and ICD/CFS. An Institutional mechanism consisting of Senior officers of Customs Administration and port authority has been made responsible at each port for implementing the recommendations of the IMG including the expeditious disposal of goods and take remedial action.

However noting the Committee's suggestion, it is submitted that a separate team of officials at Mumbai and Chennai under the supervision of Chief Commissioner Mumbai-II and Chief Commissioner Chennai (Sea) have been directed to examine the entire gamut of provisions relating to ICD/CFS and come up with a proposal of

amendment to Customs Act 1962 by way of introduction of a specific self-contained chapter including penal provisions relating to functioning of ICD/CFS. They shall be submitting the report by 15th January, 2007.

F.No. 442/12/2004- Cus.IV

Approved by Member (Cus.), CBEC

Sd/-

(Pawan Kumar Jain)
Addl. Director General.

New Delhi;
24 *July,* 2007
2 *Sravana,* 1929 *(Saka)*

PROF. VIJAY KUMAR MALHOTRA,
Chairman,
Public Accounts Committee.

PART II

MINUTES OF THE SIXTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (2007-2008) HELD ON 18th JULY, 2007

The Committee sat from 1100 hrs. to 1130 hrs. on 18th July,2007 in Room No. 51 (Chairman's Chamber), Parliament House, New Delhi.

PRESENT

Prof. Vijay Kumar Malhotra — *Chairman*

MEMBERS

Lok Sabha

2. Shri Kirip Chaliha
3. Shri Khagen Das
4. Shri P.S. Gadhavi
5. Shri R.L.Jalappa
6. Shri Raghunath Jha
7. Shri Bhartruhari Mahtab
8. Dr. Rajesh Mishra
9. Shri K.S. Rao
10. Shri Mohan Singh
11. Shri Tarit Baran Topdar

Rajya Sabha

12. Shri Janardhana Poojary
13. Shri Suresh Bhardwaj
14. Shri Prasanta Chatterjee
15. Dr. K. Malaisamy
16. Shri Ravula Chandra Sekar Reddy

SECRETARIAT

1.	Shri A. Mukhopadhyay	—	*Joint Secretary*
2.	Shri Brahm Dutt	—	*Director*
3.	Shri M.K. Madhusudhan	—	*Deputy Secretary- II*
4.	Shri Ramkumar Suryanarayanan	—	*Under Secretary*
5.	Shri N.K. Jha	—	*Under Secretary*

Office of the Comptroller and Auditor General of India

1.	Shri Nand Kishore	—	Pr. Director (AB)
2.	Shri Jayanti Prasad	—	Pr. Director (INDT)

2. At the outset, the Chairman, welcomed the Members of the Committee to the sitting. Thereafter, the Committee took up for consideration and adoption of the following draft Reports:

(i) Draft Report relating to "Functioning of Employees' State Insurance Corporation (ESIC)";

(ii) Draft Report relating to "Avoidable expenditure due to delay in taking decision — Chennai Port Trust";

(iii) Draft Report relating to "Delay in finalisation of demands";

(iv) Draft Report relating to "Property Management by Ministry of External Affairs";

(v) Draft Report on Action Taken on 9th Report of PAC (14th Lok Sabha) on "National Scheme for Liberation and Rehabilitation of Scavengers"; and

(vi) Draft Report on Action Taken on 27th Report of PAC(14th Lok Sabha) on "Non-disposal of uncleared/unclaimed Imported cargo in ICDs/CFSs".

After some deliberations, the Committee adopted these draft Reports without any amendments/modifications and authorized the Chairman to finalise and present the same to Parliament in the light of factual verification done by Audit.

3. The Committee then desired that Audit may be asked to revive the practice (upto 12th Lok Sabha) of furnishing to the Committee a compilation titled "Epitome of the Reports of the Central Public Accounts Committee" containing action taken by the Ministries on the recommendations made by PAC in their Reports alongwith the status of their implementation.

4. Further, it was decided that the Committee would convene their next sittings on 30th and 31st July, 2007.

The Committee then adjourned.

APPENDIX

STATEMENT OF OBSERVATIONS AND RECOMMENDATIONS

Sl. No.	Para No.	Ministry/Department	Observations/Recommendations
1	2	3	4
1.	9	Ministry of Finance (Department of Revenue)	The Committee express their satisfaction over the steps taken by the Ministry for safeguarding the revenue due to Government as well as for the expeditious collection of Revenue in cases where seizure/confiscation of goods is involved. However, the Committee are apprehensive about the possibility of owners making fraudulent claims when goods are released provisionally on the basis of bond furnished by them. The Committee would like to reiterate that the protection of Government Revenue should be the underlying objective of the measures that are aimed at simplification of procedures. Government, should therefore, take all possible steps to prevent the possibility of misuse of this facility by the owners so as to protect the Government Revenue. The Committee would also like to be apprised about the progress made by the Customs Houses in constituting the Special Task Force as well as the work done by these Task Forces in review of the consignments that were pending for final decision under the revised procedure.
2.	12	-do-	The Committee note that team of Customs officials of Mumbai and Chennai under the supervision of Chief Commissioners of Customs Mumbai-II

1	2	3	4
			and Chennai (Sea) respectively had been constituted to examine the entire gamut of provisions relating to ICD/CFS and to suggest proposals for suitable amendments to Customs Act, 1962 for incorporating a self-contained Chapter on functioning of ICDs/CFSs therein. The Committee have also been informed that the Team of officials would be submitting its Report by 15th January, 2007. The Committee would like to be apprised of the main findings of the Report of the Expert team and the changes/amendments made or proposed to be made in the Customs Act, 1962 in pursuance of the recommendation/suggestion given by the Team of officials within three month from the presentation of the Report.
3.	15	Ministry of Finance (Department of Revenue)	The Committee regret to note that despite the measures taken by the Government for expeditious disposal of unclaimed/uncleared cargo, the same had very little impact at the ground level *i.e.*, in ICDs/CFSs in clearance of the pending cargo. What is surprising to the Committee is the fact that even after the issue of instructions regarding setting up a permanent mechanism for expeditious disposal of the backlog of accumulated cargo, the position with regard to clearance of pending cargo in various Commissionerates has been far from satisfactory. From the details furnished by the Ministry, the Committee find that in respect of 3 Commissionerates *viz.* Chennai (sea port), Chennai (Prev.) (Trichy) and Amritsar Commissionerate a large number of cases are still pending for disposal. The situation is quite dismal in case of Chennai (Prev.) Commissionerate—Trichy, where out of

1	2	3	4
			1017 containers that were stated to be pending as per Audit Report, only 32 could be disposed off and a large contingent of 985 containers are still to be disposed off. Further in respect of ICD, Tugulakabad, out of 618 containers that were pending for disposal, only 64 could be cleared and 554 containers are yet to be disposed off. These facts indicate that there is need to implement the procedure/guidelines in right earnest by the concerned agencies. The Committee, accordingly, reiterate that the Government should take all possible measures so that the cargo pending in various Commissionerates and ICDs/ CFSs are disposed off within the stipulated period.

PARLIAMENTARY PUBLICATIONS CAN ALSO BE OBTAINED FROM THE FOLLOWING AUTHORISED AGENTS:—

Sl.No.	Name of Agent
	ANDHRA PRADESH
1.	M/s. Ashok Book Centre, Benz Circle, Vasavya Nagar, Vijaywada-520006. (A.P)
	BIHAR
2.	M/s. Progressive Book Centre, Zila School, Pani Tanki Chowk, Ramna, Muzaffarpur-842002. (Bihar)
	DELHI
3.	M/s. Jain Book Agency, C-9, Prem House, Connaught Place, P.B. No. 1113. New Delhi-110001.
4.	M/s. Bookwell, 2/72, Sant Nirankari Colony, Kingsway Camp, Delhi-110009.
5.	M/s. Rajendra Book Agency, IV-D-50, Lajpat Nagar, Old Double Storey, New Delhi-110024. (T. Nos. 26412362 & 26412131)
6.	M/s. Central News Agency Pvt. Ltd., P-23, Connaught Circus, New Delhi-110001.
7.	The Manager, M/s. Books India Corporation, Publishers, Importers & Exporters, L-27, Shastri Nagar, Delhi-110052.
8.	M/s. Sangam Book Depot, LG-3, Akarshan Bhawan, 23, Ansari Road, Darya Ganj, New Delhi-110002.
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